

REMARKS

The Office Action mailed March 10, 2005 has been reviewed and carefully considered. The Examiner's reconsideration is respectfully requested in view of the above amendments and the following remarks.

Claims 1-19 are pending in the present application.

By the Office Action, claims 1-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,324,582 to Sridhar et al. (hereinafter Sridhar) in view of U.S. Patent No. 5,913,041 to Ramanathan et al. (hereinafter Ramanathan).

Applicant respectfully traverses the rejection.

Sridhar is cited as disclosing the present invention as claimed; however, Applicant has carefully reviewed Sridhar and respectfully disagrees. As discussed in the Summary (Col. 5, lines 10 to Col. 6, line 50) and claims (Columns 39-40), Sridhar involves a system and method for communicating between a client communication system and multiple server communication systems over a data communication network (e.g., the Internet). In Sridhar, upon accepting a request to communicate with one of the server communication systems, an identification of such server communication is received. The identification is used to determine a set of transport layer protocols (for which the server communication system is configured to communicate) and one of the set of protocols is selected for communicating with the server communication system. The set of transport layer protocols is determined by retrieving information related to the server communication system from a directory service computer over the data communication network. The address of such directory service computer is related to the identification of the server communication system.

As such, it is readily apparent that Sridhar's system and method is simply focused on *achieving* communication between client and server communication systems. This is wholly unrelated to the present invention's focus on *maintaining* a steady data stream from a customer premise unit to a customer during a loss of a physical layer between a server and the customer premise unit, essentially as claimed in claims 1 and 11. Please note a distinction exists not only between the terms "achieving" vs. "maintaining," but between the concepts of 'client to server' in Sridhar vs. 'customer premise unit to customer' in the present invention.

There is no teaching or disclosure in Sridhar directed towards ensuring maintenance of a steady data stream during loss of a physical layer. While Sridhar mentions in Col. 12, lines 51-53, "explicit rate control" to "limit the rate at which data is sent along a communication path based on knowledge of the ability of the data path to transfer data" this in no way relates to maintaining a steady data stream **during loss of a physical layer**, as acknowledged by the Examiner on page 3 of the Office Action.

Further, the buffering process in Sridhar (cited by the Examiner in Col. 13, lines 52-62) is distinguishable from the use of the buffer in the present invention; in Sridhar, specific data is prefetched (based on references embedded in Web pages) from server computers and is sent to the gateway computer in anticipation of a client making an explicit request for such data, and the data is buffered at the gateway computer. In contrast, the buffer of the present invention is part of a recovery mechanism for ensuring an adequate amount of data is buffered at a customer's location to provide sufficient delay in the system to account for down time to restore the physical layer.

The Examiner alleges that Ramanathan, in combination with Sridhar, would obviously result in the presently claimed invention. However, even assuming *arguendo*, that such references could be combined, it is respectfully asserted that Ramanathan fails to cure the deficiencies of Sridhar. Ramanathan's system merely involves monitoring throughput during data transfers between a server and remote subscribers. Ramanathan states that since data transfer throughput is one of the main measures of performance from a subscriber's point of view, throughput provides an assessment of subscriber satisfaction and thus throughput monitoring is of interest to data service operators. Accordingly, Ramanathan's focus is on monitoring throughput e.g., to determine what is causing throughput reduction and if necessary, reporting any problems. However, Ramanathan fails to disclose, teach or relate to the present invention's ability to maintain a steady data stream to a customer **despite** 'throughput problems' (e.g., loss of a physical layer).

While Ramanathan's system may detect errors such as packet losses which cause throughput reduction (as cited by the Examiner in Col. 7, line 66 - Col. 8, line 21), this is simply for the purpose of monitoring trends in throughput values, from which network operators can obtain early indicators of network degradation, perform further diagnostics and schedule proactive maintenance (e.g., schedule network repairs/dispatch maintenance personnel at the least disruptive times). There is no teaching in Ramanathan of at least maintaining a steady data stream during loss of a physical layer, much less any means for controlling a data rate of a data stream to ensure maintenance of a steady data stream to the customer, essentially as claimed in claims 1 and 11. At most, any mention in Ramanathan of a physical layer is limited to running active loss-rate tests to assess

whether the throughput reduction was caused by physical layer impairments (Col. 8, lines 24-26).

Accordingly, claims 1 and 11 are believed to be allowable over Sridhar in view of Ramanathan. Claims 2-10 and 12-19 depend either directly or indirectly on claims 1 and 11, respectively. As such, the Applicant respectfully submits that the dependent claims are patentable and nonobvious for at least the reasons given above for claims 1 and 11.

Accordingly, the Applicants respectfully request withdrawal of all the rejections under 35 U.S.C. §103(a), and allowance of pending claims 1-19 on the merits.

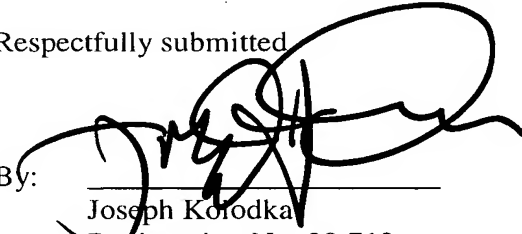
In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims now pending in the application are in condition for allowance.

In view of the foregoing amendments and remarks, it is respectfully submitted that claims 1-19 are patentable and nonobvious over the cited references. Consequently, the Applicants respectfully request reconsideration and withdrawal of the rejections and allowance of the application. Such early and favorable action is earnestly solicited.

No fees are believed to be due at this time. The office is hereby authorized to charge any additional fees which may be required in connection with this amendment and to credit any overpayment to our Deposit Account No.07-0832.

Respectfully submitted

By:

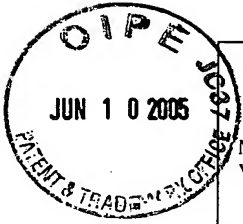

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CERTIFICATE OF MAILING

I hereby certify that this amendment is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, Alexandria, Virginia 22313-1450 on:

June 8, 2005
Date

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